

ENCLOSURE - 7 AM 11:23

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

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CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and Monarch Cement Company (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act, (hereinafter "the Act"), 42 U.S.C. § 7413(d).
2. This Complaint serves as notice that the United States Environmental Protection

Agency (EPA) has reason to believe that Respondent has violated certain requirements of the Act, 42 U.S.C. § 7401 et seq., at 42 U.S.C. § 7412, and the regulations at 40 C.F.R. Part 63, Subpart LLL, and therefore is in violation of Section 112 of the Act. Furthermore, this Complaint serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for such violations.

3. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the first alleged date of violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

Parties

4. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Air, RCRA, and Toxics Division, EPA, Region VII.

5. The Respondent is Monarch Cement Company, a "person" as defined in the Act and a Kansas corporation in good standing. Respondent's facility is located at 449 1200 Street, Humboldt, Kansas.

Statutory and Regulatory Background

6. The regulations at 40 C.F.R. part 63, Subpart LLL, were promulgated pursuant to Section 112 of the Act, and apply to Respondent's Portland cement plant at Humboldt, Kansas.

7. 40 C.F.R. §§ 63.1349(a) and 63.7(d)(2) state that affected sources must demonstrate initial compliance with applicable emission limits within 180 days of the compliance date for the

affected source.

9. 40 C.F.R. §§ 63.5(d) requires that an affected source must submit a preconstruction notification prior to the reconstruction of a major affected source.

10. 40 C.F.R. §§ 63.1350(f)(2) requires the installation of temperature monitoring devices at the inlet to the kiln, inline kiln/raw mill and/or alkali bypass PMCD. 40 C.F.R. § 63.8(b)(1)(ii) requires the approval of the use of alternatives to any monitoring requirements or procedures.

VIOLATIONS

11. Respondent failed to provide preconstruction notification for the installation of a new clinker cooler to replace an existing clinker cooler as required by 40 C.F.R. §§ 63.5(d).

12. Respondent failed to perform the required performance testing on the clinker cooler within 180 days of startup of the source as required by 40 C.F.R. §§ 63.1349(a) and 63.7(d)(2).

13. Respondent failed to properly locate a temperature monitoring device at an inlet to the kiln PMCD as required by 40 C.F.R. §§ 63.1350(f)(2), and failed to receive approval of the use of alternatives to any monitoring requirements as required by 40 C.F.R. § 63.8(b)(1)(ii).

14. Respondent therefore violated Section 112 of the Act and the regulations at 40 C.F.R. §§ 63.5(d), 63.1349(a), 63.7(d)(2), 63.1350(f)(2) and 63.8(b)(1)(ii).

CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits only the above jurisdictional allegations and neither admits nor denies the above specific factual allegations and alleged violations.

2. Respondent certifies by the signing of this Consent Agreement and Final Order (CAFO) that to the best of its knowledge, Respondent's facility is presently in compliance with all requirements of the National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry, 40 C.F.R. Part 63, Subpart LLL.

3. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.

4. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

5. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

6. Pursuant to the provisions of the Clean Air Act, 42 U.S.C. §§ 7401et seq., the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Fifteen Thousand Dollars (\$15,000.00).

7. Without admitting any violation of law, Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

8. Not more than thirty (30) days after the issuance of the executed Consent Order, Respondent shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," in the amount of Fifteen Thousand Dollars (\$15,000.00), to :

EPA - Region VII
Attn.: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

A copy of the check shall be mailed to:

Kent Johnson
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

9. The penalty specified in Paragraph 6, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

10. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty

payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

11. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

12. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement and Final Order.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

6/2/04
Date

By William A. Spratlin
William A. Spratlin
Director
Air, RCRA and Toxics Division

6/1/04
Date

By Kent Johnson
Kent Johnson
Assistant Regional Counsel

RESPONDENT:

MONARCH CEMENT COMPANY

5/28/04
Date

By Ray L Owens
Title V. P. Operations

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective immediately.

June 7, 2004
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF Monarch Cement Company, Respondent
Docket No. CAA-07-2004-0196

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

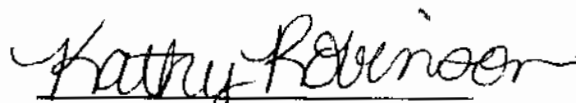
Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Thomas J. Grever
Lathrop & Gage, L.C.
2345 Grand Boulevard
Kansas City, Missouri 64108-2684

Dated: 6/9/04


Kathy Robinson
Regional Hearing Clerk